

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Roanoke Division**

**COREY E. JOHNSON,**

**Plaintiff,**

**v.**

**CANINE OFFICER MCCOWAN, *et al.*,**

**Defendants.**

Civil Action No. 7:20-cv-00582

**PLAINTIFF’S MOTION *IN LIMINE*  
TO BAR DEFENDANTS’ “GOOD CHARACTER” EVIDENCE**

Plaintiff, Corey Johnson, by his attorneys, respectfully moves *in limine* to bar Defendants’ commendations, awards, complimentary history, promotions, performance reviews, and other “good character” evidence. Plaintiff, through his counsel, discussed with defendants whether they were willing to stipulate that they would not introduce such evidence and they declined to do so.

**ARGUMENT**

Defendants, either through their fact or expert witnesses, may seek to introduce evidence of their “good character” by reference to prior work-related commendations, awards, complimentary history, promotions, or performance reviews, among other evidence. *See, e.g.*, Kmiecik Report at 55 (“The Commonwealth of Virginia was awarded the Golden Eagle Award and the Lucy Webb Hayes Award by the ACA ....”); Plaintiff objects to any attempt to interject good character evidence into the trial.

Rule 404(a) could not be clearer that “[e]vidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the

character or trait.” Fed. R. Evid. 404(a). Evidence of commendations, awards, lack of prior disciplinary incidents, and the like cannot possibly be relevant to an issue in this trial other than to suggest that Defendants conducted themselves as model corrections officials or corrections administrators or model officers. *See, e.g., Zephryne v. Prince George’s County*, No. AW–02–1796, 2007 WL 5445450 at \*1 (D. Md. Feb. 1, 2007) (police award was improper “good character” evidence under Rule 404); *see also United States v. Maynard*, No. 2:21-cr-00065, 2021 WL 5161737, at \*3 (S.D. W.Va. Nov. 2, 2021) (military honors were improper character evidence); *see also United States v. Candelaria-Silva*, 166 F.3d 19, 35 (1st Cir. 1999) (police officer’s “certificate of good conduct” was improper character evidence and inadmissible under Rule 405).

The evidence is *per se* inadmissible for that purpose.

### CONCLUSION

Accordingly, for the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order barring references to Defendants’ commendations, awards, complimentary history, promotions, performance reviews, and other “good character” evidence.

Dated: December 16, 2022

Respectfully submitted,

/s/ Andrew C. Johnson  
Oren Nimni (admitted *pro hac vice*)  
RIGHTS BEHIND BARS  
416 Florida Ave. NW #26152  
Washington, D.C. 20001  
Tel: 202.455.4399  
E-mail: oren@rightsbehindbars.org

Ian S. Hoffman (VA Bar # 75002)  
John A. Freedman (admitted *pro hac vice*)  
ARNOLD & PORTER KAY SCHOLER LLP  
601 Massachusetts Ave., N.W.  
Washington, D.C. 20001-3743  
Tel: 202.942.5000  
Fax: 202.942.5999

E-mail: Ian.Hoffman@arnoldporter.com  
E-mail: John.Freedman@arnoldporter.com

Lauren S. Wulfe (admitted *pro hac vice*)  
ARNOLD & PORTER KAYE SCHOLER LLP  
777 S. Figueroa St., 44th Floor  
Los Angeles, CA 90017-5844  
Tel: 213.243.4000  
Fax: 213.243.4199  
E-mail: Lauren.Wulfe@arnoldporter.com

Andrew C. Johnson (admitted *pro hac vice*)  
ARNOLD & PORTER KAYE SCHOLER LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111-4024  
Tel: 415.471.3321  
Fax: 415.471.3400  
E-mail: Andrew.Johnson@arnoldporter.com

**CERTIFICATE OF SERVICE**

I hereby certify that, on December 16, 2022, I caused the foregoing document to be electronically filed through the Court's CM/ECF system, which caused a notice of electronic filing and copy of the foregoing to be served on all counsel of record.

Respectfully submitted,

/s/ Andrew C. Johnson

Andrew C. Johnson (admitted *pro hac vice*)  
ARNOLD & PORTER KAYE SCHOLER LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111-4024  
Tel: 415.471.3321  
Fax: 415.471.3400  
E-mail: Andrew.Johnson@arnoldporter.com